

1 WILLIAM BRADSHAW
2 D-73217 GW-325U
3 P.O. Box 689
4 Soledad, CA. 93960-0689

FILED

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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 In the matter of)

Case No. C 08-1787 JF (PR)

12 WILLIAM BRADSHAW)

13 On Habeas Corpus.)
14)

17 TRAVERSE TO RESPONDENT'S RETURN TO ORDER TO SHOW
18 CAUSE RE PETITION FOR WRIT OF HABEAS CORPUS
19)
20)
21)

22 WILLIAM BRADSHAW
23 Petitioner, In Pro Per
24
25
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27
28

TABLE OF AUTHORITIES

	<u>CASES</u>	<u>PAGE No.</u>
	<u>FEDERAL</u>	
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	Biggs v. Terhune, 334 F.3d 910, 914 (9th Cir. 2003)	3,4
	McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002)	3,4
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	Greenholtz v. Inmates of Neb. Penal & Corr. Comp., 442 U.S. 1, 7 (1972)	3
	Board of Pardons v. Allen, 482 U.S. 369, 376-378	3
	Superintendent v. Hill, 472 U.S. 445, 457 (1985)	4

CONSTITUTIONAL AUTHORITIES

Fourteenth Amendment to the United States Constitution	passim
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1 the California Department of Corrections and Rehabilitation (CDCR).
2 Petitioner denies the remaining part of the allegation that he is currently
3 "...in the lawful custody of the CDCR," for the reasons alleged in the
4 original petition.

5 II.

6 Petitioner admits the allegation in paragraph 2 that he filed a
7 petition for Writ of Habeas Corpus in Orange County Superior Court and
8 that it was denied. Petitioner generally and specifically denies each
9 and every remaining allegation in paragraph 2.

10 III.

11 Petitioner admits the allegations in paragraph 3.

12 IV.

13 Petitioner does not understand Respondent's contradictory position
14 in paragraph 4. On one hand, Respondent admits Petitioner has exhausted
15 his state court remedies regarding claims against his 2006 Board of Paroles
16 hearing, then on the other hand states that he does not admit that the
17 claims have been exhausted "to the extent they are more broadly interpreted
18 to encompass any systematic issues beyond this claim," and therefore denies
19 said allegation.

20 V.

21 Petitioner admits to the allegation of paragraph 5.

22 VI.

23 Petitioner denies Respondent's allegation in paragraph 6 claiming
24 that Petitioner is not entitled to Federal Habeas relief. The state court
25 denials of habeas relief were contrary to and involved an unreasonable
26 application of, clearly established United States Supreme Court law, and
27 those denials were based on an unreasonable interpretation of the evidence
28 presented. This is the basic foundation of the original petition for habeas

1 corpus before this Honorable Court.

2 VII.

3 Petitioner denies the allegation in paragraph 7 that Petitioner does
4 not have a federally protected liberty interest in parole under California
5 Penal Code §3041. Contrary to Respondent's position, it has been made
6 clear that California's parole scheme vests all prisoners whose sentence
7 provides for the possibility of parole with a constitutionally protected
8 liberty interest in the receipt of a parole release date, a liberty
9 interest that is protected by the procedural safeguards of the Due Process
10 Clause. (Irons v. Carey, (9th Cir. 2007) 479 F.3d 658, 662 (citing Sass
11 v. California Board of Prison Terms, (9th Cir. 2006) 461 F.3d 1123, 1128;
12 Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 914; and McQuillion v.
13 Duncan, (9th Cir. 2002) 306 F.3d 895, 903). Respondent misapplies Sandin
14 v. Conner, 515 U.S. 472 (1995), Mistates the rules of Greenholtz v. Inmates
15 of Nebraska Penal and Corrections Complex, 442 U.S. 1, 7 (1972), and
16 ignores Board of Pardons v. Allen, 482 U.S. 369, 376-378 (1987), the latter
17 two of which both directly found a federal liberty interest in parole
18 based on the identical type of language as is contained in California's
19 parole statute, Penal Code §3041. Petitioner denies each and every
20 remaining allegation in paragraph 7.

21 VIII.

22 Petitioner generally and specifically denies the allegations in
23 paragraph 8. Under McQuillion I, Sass, Irons, and Biggs, Petitioner was
24 entitled to more due process protections than alleged, and even if not,
25 he denies that the Board gave him due consideration, or that its
26 explanation was sufficient, for all the reasons stated in the original
27 petition, herein, and in the accompanying points and authorities.
28

IX.

Petitioner specifically denies Respondent's allegation in paragraph 9, denying "that the some-evidence test is clearly established federal law in the parole context." Petitioner alleges that the Supreme Court has set a standard of review in Superintendent v. Hill, 472 U.S. 445, 457 (1985), which provides the basis for the "some-evidence" standard. This standard has been utilized by the Ninth Circuit in multiple published opinions, making it clear that under principles of federal due process, California inmates are entitled to a "some-evidence" review of their parole hearing. (Sass v. California Board of Prison Terms, supra, 461 F.3d 1123 (9th Cir. 2006); Irons v. Carey, supra, 479 F.3d 658 (9th Cir. 2007); Biggs v. Terhune, supra, 334 F.3d 914 (9th Cir. 2003); and McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002).) Petitioner also denies the allegation in the second part of paragraph 9. Under Federal law, the United States Supreme Court has clearly established that a parole board's decision deprives a prisoner of due process if the board's decision is not supported by "some evidence in the record", or is "otherwise arbitrary." (Irons v. Carey, supra, 479 F.3d 658, 662 (9th Cir. 2007) [applying "some evidence" standard used for disciplinary hearings as outlined in Superintendent v. Hill, 472 U.S. 445-455 (1985)].) The evidence underlying the Board's decision must also have "some indicia of reliability." (McQuillion v. Duncan, 306 F.3d 904; and Biggs v. Terhune, 334 F.3d 915).

X.

Petitioner generally and specifically denies the allegations in paragraph 10 and 11 for the reasons stated in allegation 9, in the original petition, and in the accompanying points and authorities.

XI.

Petitioner denies the allegations in paragraph 12. Petitioner alleges

1 that an evidentiary hearing may be necessary to resolve the factual disputes
2 and that the existing state court record is not sufficient and should be
3 augmented¹.

4 XII.

5 Petitioner denies the allegation in paragraph 13. This Honorable
6 Court will assess what remedy Petitioner is entitled to, not the Respondent.
7 Petitioner affirmatively alleges that the remedy ranges from ordering a
8 new hearing under the guidance from this Honorable Court all the way to
9 ordering the Petitioner released.

10 XIII.

11 Petitioner denies the allegations in paragraph 14. For the reasons
12 set forth herein, in the accompanying Points and Authorities, and in the
13 original petition, Petitioner has established his grounds for relief and
14 shown that he meets both prongs of the AEDPA.

15 XIV.

16 Petitioner generally and specifically denies the allegations in
17 paragraph 15.

18 XV.

19 Petitioner re-alleges each and every allegation and all of his claims
20 as presented in his original petition, and the factual showing in his
21 exhibits, and affirmatively alleges that Respondent, in his return, has
22 done nothing more than restate the Board's decision via the Superior Court
23 decision without offering any real explanation as to how or why the

24
25 ¹ As part of an evidentiary hearing, this Court can order the Respondent
26 to produce the decisions by the parole board during the 90 days before
27 and after Petitioner's hearing. Petitioner anticipates that it will show
28 that in 100% of all murder cases, the crime has been found to be "especially
heinous, atrocious or cruel" at some point. Thus as applied would violate
federal due process, in that it can fit any crime, and has lost the ability
to distinguish crimes that truly are particularly egregious.

1 evidence supports a finding that Petitioner would currently pose an
2 unreasonable risk of danger to the public if released. Respondent
3 mischaracterizes and misconstrues Petitioner's arguments and theories,
4 and the Court's attention is directed to the original petition and the
5 accompanying points and authorities for a full understanding of the actual
6 arguments relied upon herein. These documents provide the legal and factual
7 basis for the claims raised herein.

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9 /

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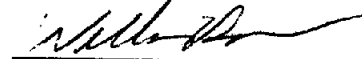
11 /

PRAYER

Petitioner respectfully submits that the petition for writ of habeas corpus should be granted, and that he is entitled to the relief requested in the petition.

Dated: 8-18-08

Respectfully submitted,



WILLIAM BRADSHAW
Petitioner, In Pro Per

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. §§ 1013(A), 2015,5)

I, WILLIAM BRADSHAW, declare:
I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

WILLIAM BRADSHAW, CDCR #: D-73217
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: GW-325U
SOLEDAD, CA 93960-0689.

On 8-18-08, I served the attached:

TRAVERSE TO ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS / MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF TRAVERSE

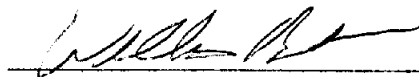
on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

AMANDA J. MURRAY
DEPUTY ATTORNEY GENERAL
455 Golden Gate Avenue, Suite 11000
San Francisco, CA. 94102-7004
(Attorney for Respondent)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Ave.
San Francisco, CA. 94102-9680

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 8-18-08.


WILLIAM M. BRADSHAW
Declarant in Pro Per

WILLIAM M. BRADSHAW
D-73217 GW-325U
P.O. Box 689
SOLEIDAD, CA. 93960-0689

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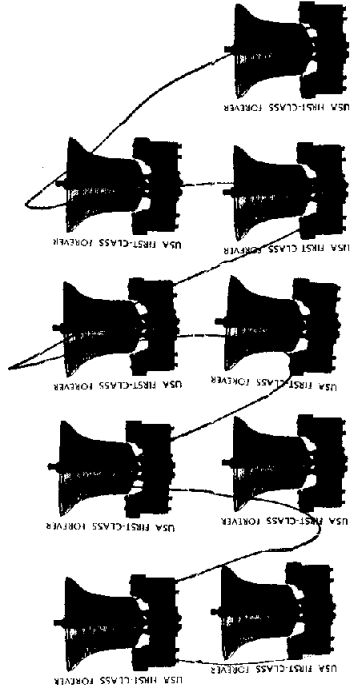
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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Ave.
San Francisco, CA. 94102-9680

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5/18/08



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